

Notice  
of Rulemaking Hearing  
Department of Commerce and Insurance  
Division of Insurance

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. § 50-6-504(c). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. CST on the 17th day of December, 2004.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243, telephone (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: John F. Morris, Chief Counsel for Insurance and TennCare or Tracey Gentry Harney, Staff Attorney, Department of Commerce and Insurance, Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243, telephone (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-54  
Self-Insured Workers' Compensation Pools

New Rules  
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Rule 0780-1-54-.01 Purpose and Scope.

The purpose of this Chapter is to regulate employers that choose to pool their workers' compensation liabilities pursuant to Tenn. Code Ann. § 50-6-405(c). This Chapter shall not apply to governmental tort liability pools established pursuant to Tenn. Code Ann. Title 20, Chapter 2.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.02 Definitions.

- (1) "Administrator" means any person engaged by a pool to carry out the policies established by the pool's board of trustees and to provide daily management of the pool.
- (2) "Certificate of Authority" means a license issued by the Commissioner to a pool granting it the authority to insure the workers' compensation liabilities of its members for such members' employees in this State.
- (3) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (4) "Department" means the Tennessee Department of Commerce and Insurance.
- (5) "Designated Rate Service Organization" means the rate service organization designated by the Commissioner pursuant to Tenn. Code Ann. § 56-5-320.
- (6) "Fund year" means the calendar year during which workers' compensation insurance liabilities and expenses associated therewith are incurred by a pool. Each fund year shall be considered separately for purposes of allocated losses and expenses and for reserving for and paying such losses and expenses.
- (7) "IBNR" or "Incurred But Not Reported" means those claims which have been incurred by an insured of the pool but which have not been submitted to the pool for payment of workers' compensation benefits.
- (8) "Insolvent" or "insolvency" means a pool whose liabilities exceed the value of its assets and/or that has stopped paying debts in the ordinary course of business or is unable to pay them as its debts fall due, as may be shown by an excess of the pool's required liability reserves and other liabilities over its assets.
- (9) "Insurance Law" means any law administered by the Commissioner affecting the business of insurance in this state, including, but not limited to Tenn. Code Ann. § 50-6-405 and Tenn. Code Ann. §§ 56-1-101, *et. seq.* as well as any rules promulgated thereunder.
- (10) "Known Claims" means claims that have been incurred by an insured of the pool and identified to, or submitted to, the pool for payment of workers' compensation benefits.
- (11) "Loss reserves" means funds of the pool immediately available to pay:
  - (a) known or open claims and expenses associated therewith;
  - (b) IBNR and expenses associated therewith;
  - (c) unearned premiums;
  - (d) bad or uncollectible debts; and

- (e) expenses associated with run-off or termination of a pool.
- (12) “Manual Rate” means the product of the advisory prospective loss cost and a pool’s loss cost multiplier for each individual self-insured pool.
- (13) “NAIC” means the National Association of Insurance Commissioners.
- (14) “Net premium” means premium derived from standard premium adjusted by any advance premium discounts.
- (15) “Person” means any natural or artificial person including, but not limited to, an individual, partnership, association, trust, or corporation.
- (16) “Qualified Actuary” means an individual who:
  - (a) Is a member in good standing of the American Academy of Actuaries and an associate or fellow of the Casualty Actuarial Society;
  - (b) Is qualified to sign statements of actuarial opinion for workers’ compensation insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;
  - (c) Is familiar with the reserve requirements applicable to workers’ compensation insurance companies; and
  - (d) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
    - 1. Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or
    - 2. Been found guilty of fraudulent or dishonest practices; or
    - 3. Demonstrated his or her incompetence, lack of cooperation with the Commissioner, or untrustworthiness to act as a qualified actuary; or
    - 4. Submitted to the Commissioner during the past five (5) years an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provision of this chapter including standards set by the Actuarial Standards Board; or
    - 5. Resigned or been removed as an actuary within the past five (5) years as a result of failure to adhere to generally acceptable actuarial standards.
- (17) “Pool” means any group of employers who, for the purpose of qualifying as self-insurers, pool their liabilities related to workers’ compensation insurance, as provided in Title 50, Chapter 6 of Tennessee Code Annotated.
- (18) “Sponsoring association” means an association which has given a group of ten (10) or more employer members of the association permission to pool their liabilities under Tenn. Code Ann. Title 50, Chapter 6 for the purposes of qualifying as self-insurers.
- (19) “Standard premium” means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.

- (20) “Third party administrator” means a person which contracts with a pool to provide services relating to any of the following:
  - (a) Claim adjusting;
  - (b) Safety engineering;
  - (c) Compilation of statistics and the preparation of reports relating to premium, loss and taxes;
  - (d) Preparation of other required self-insurance reports;
  - (e) Development of members’ premiums, assessments, and other fees; or
  - (f) Administration of a claim fund.
- (21) “Unearned premium” means the portion of the written premium applicable to the unexpired or unused part of the policy period for which the premium has been paid.
- (22) “Workers’ compensation” means both workers’ compensation and employer’s liability, as prescribed under Title 50, Chapter 6 of the Tennessee Code Annotated.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.03 Certificate of Authority Required.

No person shall act as a pool without a certificate of authority issued to it by the Commissioner.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.04 Application for Certificate of Authority.

- (1) To apply for a certificate of authority, a pool shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a non-refundable filing fee as set under Tenn. Code Ann. § 56-4-101(a)(1). A person in this state applying for a certificate of authority to act as a pool shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person’s knowledge and belief under penalty of perjury.
- (2) An application for a certificate of authority shall include the following documentation, together with such other information or documentation as the Commissioner may require:
  - (a) Organizational documents and information.
    - 1. The articles of incorporation, trust agreement, or any other similar document from which the pool is formed;
    - 2. The by-laws of the pool;
    - 3. The mailing addresses and physical location of all of the pool’s offices in Tennessee, including the address where the books and records of the pool will be located;
    - 4. The name, address, and telephone number of each member; and

5. Documentation evidencing designation of the board of trustees, administrator, and, if applicable, third party administrator.
- (b) Written contracts.
1. All contracts between the pool and the pool's expected administrator;
  2. All contracts between the pool and the pool's expected third party administrator;
  3. Any and all royalty agreements or contracts;
  4. Any and all service fee agreements or contracts; and
  5. The errors and omissions insurance policies for the board of trustees issued to protect the pool from damages, if any.
- (c) Operational documents.
1. Any operational and/or claims manual to be used by the pool;
  2. Documentation establishing the rate at which insurance producers will be commissioned to solicit members to join the pool; and
  3. Underwriting guidelines established by the board of trustees.
- (d) Financial documents.
1. Documentation in a form acceptable to the Commissioner evidencing the financial ability of the pool to pay the obligations of the pool and to pay the workers' compensation obligations of its members, as provided in this Chapter;
  2. Documentation evidencing proof of payment to the pool by each member of the initial premium due for such member; and
- (e) Member documents.
1. Each member's application for membership into the pool;
  2. Indemnity agreements between the pool and each member establishing each member's joint and several liability to the pool for all expenses, liabilities, and claims asserted against the pool by any person or entity;
  3. Documentation evidencing the current experience modifier of each member;
  4. Documentation evidencing loss run data for each member for the past four (4) years; and
  5. A financial statement for the most recent fiscal year ended over ninety (90) days prior to the application and for each quarter ended more than thirty (30) days prior. The pool may file the following types of financial statements in order to comply with this Rule:
    - (i) Audited financial statement prepared by a certified public accountant;
    - (ii) Compilation report prepared by a certified public accountant; or

(iii) Tennessee Franchise and Excise Tax Return including Form 1120.

(f) Sponsoring association documents.

1. The articles of incorporation or other similar document from which the sponsoring association is formed;
2. The by-laws, constitution, and procedures of the sponsoring association;
3. Documentation evidencing the fact that the sponsoring association has members that support the association by regular payment of dues on an annual, semiannual, quarterly or monthly basis;
4. A certification signed by the president of the sponsoring association that the association was created in good faith for purposes other than that of creating a self-insurance pool; and
5. Documentation evidencing that the sponsoring association has reviewed the pool's application for a certificate of authority and believes and represents to the Commissioner that the statements made in the application and the documents accompanying the application comply with the sponsoring association's constitution, by-laws and procedures and applicable state statutes and regulations.

(3) To obtain and maintain its certificate of authority, a pool shall comply with the following requirements as well as any other requirements established by law or regulation:

(a) Each pool shall provide proof to the Commissioner that it is comprised of ten (10) or more employers of the same trade or professional association, and that the member employers are engaged in the same trade or profession as the other members.

1. The Commissioner may refuse to issue a certificate of authority to a pool upon finding that the different class codes which the pool would be self-insuring are of such diversity or type of risk that it would not be in the interest of the members, the members' employees, or the public to allow a pool to self-insure such diverse class codes.
2. The Commissioner may, after notice and hearing, revoke the certificate of authority upon finding that the pool is self-insuring class codes of such diversity and risk that it is not in the interest of the members, the members' employees, or the public to allow a pool to self-insure such diverse class codes. In lieu of revoking a pool's certificate of authority, the Commissioner may order a pool to refuse an application for membership, cancel or non-renew a member upon making such findings.
3. Pools that possess a certificate of authority as of January 1, 2005 do not have to comply with Subparagraph (a) except to the extent they accept new members after such date.

(b) Upon request by the Commissioner, a pool shall provide proof of an ability to pay all claims, liabilities and legal obligations of the pool, including all open workers' compensation claims submitted by employees of the members of the pool. Such proof shall be established by the following documents:

1. The pool's annual audited financial reports. Such annual audited financial reports shall adhere to the requirements for financial reports provided in Chapter 0780-1-65;
  2. A certification from a qualified actuary that the pool has adequately reserved for its losses, including those losses that have been incurred but not reported;
  3. Each member's financial condition in the form of an annual audited financial statement, compilation report prepared by a certified public accountant, a Tennessee Franchise and Excise Tax Return including Form 1120, or such other financial statements as the Commissioner may accept; and
  4. Such other documents the Commissioner finds relevant to determining whether the pool can pay all of its claims, liabilities and legal obligations of the pool.
- (c) Each pool shall obtain both a specific and aggregate excess insurance policy in a form and amount acceptable to the Commissioner.
1. Each pool shall file with the Commissioner a certification from a qualified actuary that the amount of specific and aggregate excess insurance procured by the pool is actuarially sound.
  2. The Commissioner may disallow the use of a specific and/or aggregate excess insurance policy upon determining it is not sufficient to meet the pool's responsibilities. In making this determination, the Commissioner may consider the pool's size, types of employments, years in existence and other relevant factors.
- (d) Each pool shall enter into indemnity agreements with its members jointly and severally binding the pool and each member thereof to meet the financial obligations of the pool.
1. The indemnity agreement shall be on a form prescribed by the Commissioner and shall include minimum uniform substantive provisions prescribed by the Commissioner.
  2. Subject to the Commissioner's prior written approval, a pool may add other provisions needed because of its particular circumstances.
  3. The agreement shall be irrevocable for the period during and for which the member receives workers' compensation coverage through the pool, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the pool.
- (e) Each pool shall have an estimated annual standard premium of at least one million dollars (\$1,000,000) in order to obtain and maintain a certificate of authority.
- (f) The Commissioner may require a pool to submit any documents necessary to verify the information contained in or documents submitted with the application.
- (4) Before approving an application for a certificate of authority filed under this Rule, the Commissioner shall find that the person applying:
- (a) Has not committed any act that is a ground for denial, suspension or revocation set forth in Rule 0780-1-54-.22;

- (b) Has the financial ability to pay the obligations of the pool and to pay the workers' compensation obligations of its members;
  - (c) Has complied with all requirements for obtaining and maintaining a certificate of authority issued to a pool by the Commissioner; and
  - (d) Has paid the fees set forth in this Rule.
- (5) In the event the Commissioner determines that an applicant does not qualify for a certificate of authority, the Commissioner shall notify the applicant in writing of the denial and the basis thereof.

Authority: Tenn. Code Ann. §§ 50-6-405(c).

Rule 0780-1-54-.05 Continued Reporting Requirements.

Any amendments to the organizational documents or written contracts required to be provided to the Commissioner by Rule 0780-1-54-.04 shall be filed with the Commissioner with a non-refundable filing fee of ninety dollars (\$90.00) no later than thirty (30) days prior to the proposed effective date of the amendments.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.06 Board of Trustees.

- (1) Each pool shall be operated by a board of trustees which shall consist of not less than five (5) persons whom the members of a pool elect for stated terms of office. No less than two-thirds (2/3) of the members of the board shall be comprised of members of the pool. The pool's administrator and any owner, officer, employee of, or any other person affiliated or contracting with the administrator shall not serve on the board of trustees. All members of the board of trustees shall be residents of this State or officers of corporations authorized to do business in this State. The board of trustees of each pool shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the pool.
- (2) The board of trustees shall:
  - (a) Maintain responsibility for all monies collected or disbursed from the pool
  - (b) Conduct regular meetings, maintain minutes of such meetings and make such minutes available to the Commissioner. The board of trustees shall meet no less than once every quarter.
  - (c) Have the sole and undelegable authority to approve an application for membership into the pool and the initial premium of a new member.
    - 1. The board of trustees may choose to delegate the decision to admit new members into the pool to one (1) or more board members as long as those board members are also members of the pool.
    - 2. The decision whether to accept new members into the pool must be based on the pool's approved underwriting guidelines.
    - 3. The entire board of trustees remains liable for the decision to appoint new members even if that decision is delegated to one (1) or more board members.



- (b) Establish an investment policy for the pool. Such policy shall address credit, quality of investments, maximum maturity of investments and such other matters as the board deems appropriate.
  - (c) Designate an administrator to carry out the policies established by the board of trustees and to provide daily management of the pool. The areas of authority delegated to the administrator must be delineated in the written minutes of its meetings or in the written contract between the pool and the administrator.
  - (d) Appoint a third party administrator, should the board in its discretion desire to do so, for certain daily operations of the pool to be delegated.
  - (e) Retain an independent certified public accountant to prepare the statement of financial condition required by Rule 0780-1-54-.09.
- (3) The board of trustees shall not:
- (a) Extend credit to individual members for payment of premium, except pursuant to payment plans approved in writing by the Commissioner prior to the extension of credit; or
  - (b) Allow anyone to borrow monies from the pool.
- (4) Each pool shall include in its bylaws or articles of incorporation the method by which a trustee can be replaced or terminated.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.07 Administrators.

- (1) No person shall act as an administrator for a pool without a license issued by the Commissioner. Persons acting as an administrator for an existing pool as of January 1, 2005, shall have twelve (12) months in which to obtain such license from the Commissioner.
- (2) To apply for a license, an applicant shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a non-refundable filing fee as set under Tenn. Code Ann. § 56-4-101(a)(1). A person applying for a license to act as an administrator shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person's knowledge and belief and upon penalty of perjury.
- (3) An application for a license shall include the following documentation, together with such other information or documentation as the Commissioner may require:
  - (a) The most recent financial condition of the applicant in the form of an audited financial statement, a compilation report prepared by a certified public accountant, a Tennessee Franchise and Excise Tax Return, or such other financial statements that the Commissioner may accept;
  - (b) Evidence that the applicant has obtained a fidelity bond in the amount of two hundred thousand dollars (\$200,000) written by a company licensed to transact insurance in this state;
  - (c) Evidence that the applicant has obtained an errors and omissions insurance policy for the protection of the pool in the amount of two hundred thousand dollars (\$200,000) written by a company licensed to transact insurance in this state; and

- (d) NAIC Biographical Data forms completed by the officers and directors of the applicant.
- (4) The Commissioner may deny an application for a license issued under this Rule upon finding that the applicant does not have sufficient experience or qualification to provide services as an administrator to a pool, or for such other grounds enumerated in Rule 0780-1-54-.22. In reviewing an application, the Commissioner may consider the specific services which would be performed by the applicant for the pool.
- (5) Each pool shall enter into a written contract with the administrator setting forth with specificity the functions of the administrator in their entirety, and the entire amount of compensation to be paid to the administrator for the services rendered to the pool.
- (6) No administrator or its employees or the pool's board of trustees shall accept, or be the beneficiary of, either directly or remotely, any fee, brokerage, or commission, gift, or other consideration for or on account of any loan, deposit, sale, payment, exchange, or reinsurance transaction made by or in behalf of such pool, or be pecuniarily interest in any such purchase, sale, loan, either as borrower, principle, coprinciple, agent, or beneficiary, except that if a member, such person shall be entitled to all of the benefits accruing under the terms of the membership.
- (7) No administrator or its employee or the pool's board of trustees shall take or receive for their own use any fee, brokerage, commission, gift or other consideration of the pool except for reasonable compensation for services performed or sales or purchases made to or for the pool in accordance with the terms of the administrator contract approved by the Commissioner. No administrator or its employee or the pool's board of trustees shall collect a commission for the procurement of excess insurance for the pool.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.08 Members of the Pool.

- (1) The board of trustees shall establish underwriting guidelines with respect to the addition of members to the pool. Each pool shall file such guidelines and any amendments thereto with the Commissioner no later than thirty (30) days prior to their proposed effective date.
- (2) A person joining a pool as a member shall:
  - (a) Submit an application for membership to the board of trustees or its administrator;
  - (b) Enter into an indemnity agreement binding such person jointly and severally to the financial obligations of the pool incurred during a fund year in which the person was a member of the pool, as required by Rule 0780-1-54-.04(3)(d); and
  - (c) Pay to the Commissioner a sum required by the pool not less than twenty-five percent (25%) of the member's projected first year annual net premium. Such payment shall be in addition to the premium paid by the member for the first year of membership in the pool, and shall be kept on deposit by the Commissioner for the duration of the member's membership in the pool and a reasonable time thereafter. Such amount is refundable to the member upon the termination or cancellation of the member's membership in the pool minus any amount owed by the member to the pool once the pool establishes that there is no reasonable likelihood that an assessment will be necessary for any fund year in which the person was a member.
    - 1. Members of existing pools as of January 1, 2005, shall be given additional time to make their deposit with the Commissioner. Each existing member shall pay

twenty-five percent (25%) of its 2005 first quarter premium to the Commissioner on or before January 1, 2006.

- (3) No applicant shall become a member of a pool until the board of trustees for the pool determines that the applicant meets the current and approved underwriting guidelines and approves the membership of the applicant.
  - (a) If the Commissioner determines that a member does not qualify under a pool's current and approved underwriting guidelines, the Commissioner may order the pool to cancel the membership of the non-qualifying member.
  - (b) Any person aggrieved by an order of the Commissioner issued under Subparagraph (a) may request a hearing to appeal such an order. Such request shall be filed in writing with the Commissioner within fifteen (15) days of the entry of the order.
- (4) Membership and coverage of a pool member may take effect no earlier than each member's date of approval by the board of trustees. The pool shall notify the Commissioner within ten (10) days of granting membership to a new member, and shall file a copy of the new member's application and indemnity agreement.
- (5) Each member's application for membership and its document evidencing approval to belong to the pool shall be maintained as permanent records of the pool.
- (6) No approval for membership in a pool may be granted to, nor shall any claims be paid on behalf of, any person who has not completed, signed and notarized the indemnity agreement required by Rule 0780-1-54-.04(3)(d).
- (7) Individual members of a pool shall be subject to cancellation by the pool pursuant to the pool's by-laws. In addition, individual members may elect to terminate their participation in the pool at any time. The pool shall notify the Commissioner and the Commissioner of Labor and Workforce Development of the termination or cancellation of a member within ten (10) days of such cancellation or termination and shall maintain coverage of each cancelled or terminated member for a period of thirty (30) days after such notice unless the pool is notified sooner by the Commissioner of Labor and Workforce Development that the cancelled or terminated member has procured workers' compensation insurance through an insurer, has become a licensed self-insurer, or has become a member of another pool.
- (8) The pool shall pay all workers' compensation benefits for which each member incurs liability during the member's period of membership in the pool. Notwithstanding the foregoing, a pool may only pay workers' compensation benefits for claims incurred by employees that meet the requirements of Tenn. Code Ann. § 50-6-115. Each member shall attest to the pool annually that it complies with the extraterritorial requirements of Tenn. Code Ann. § 50-6-115.
- (9) A pool shall cancel a member that cannot promptly pay its premiums when they become due or in accordance with the pool's cancellation policy. A pool shall terminate a member that is more than one hundred twenty (120) days late in making a premium payment. A pool shall cancel a member that does not pay its assessments when due.
- (10) A member who elects to terminate its membership or is cancelled by a pool remains jointly and severally liable for the financial obligations of the pool and its members incurred during any fund year in which the person was a member of the pool.
- (11) The insolvency, bankruptcy, or a member's refusal to pay does not relieve the pool or any other members of liability for the payment of any financial obligations, liabilities or workers' compensation benefits incurred by the pool for such insolvent, bankrupt or refusing member during that member's period of membership.

- (12) The pool shall file with the Commissioner on or before the day it is required to file its audited financial statement a copy of the financial condition of each member of the pool for the most recently ended fiscal year. The statement of financial condition can be an annual audited financial statement, a compilation report prepared by a certified public accountant, a Tennessee Franchise and Excise Tax Return including a Form 1120, or such other financial statements that the Commissioner may accept.

Authority: Tenn. Code Ann. § 50-6-405(c) and Tenn. Code Ann. § 50-6-115.

Rule 0780-1-54-.09 Financial Statements and Other Reports.

- (1) When a pool determines that they will have a twenty-five percent (25%) deviation in premiums or claims from the previous year, the pool shall file with the Commissioner on or before ninety (90) days after the end of the pool's fiscal year a statement as to the pool's financial condition on the last day of the pool's fiscal year, and its business that year, which statement shall be filed in accordance with annual statement instructions established by the Commissioner for workers' compensation insurers required to make such filings in this State.
- (a) The assets and liabilities shall be computed and allowed in such statement in accordance with the standards applicable to workers' compensation insurers authorized to do business in this State.
- (b) The financial statement shall include, but not be limited to, an opinion from a qualified actuary as to the adequacy of loss reserves for:
1. Known claims and expenses associated therewith;
  2. Claims incurred but not reported and expenses associated therewith;
  3. Unearned premiums;
  4. Bad or uncollectible debts, for which reserves shall be shown as liabilities; and
  5. Expenses associated with the run-off or termination of the pool.
- (c) Such statement shall be subscribed and sworn to by the administrator of the pool and the chairman of the board of trustees.
- (2) Each pool shall submit to the Commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth (6<sup>th</sup>) month following the end of the pool's fiscal year. Such statement shall also be accompanied by a non-refundable filing fee of five hundred dollars (\$500).
- (a) A pool shall be given thirty (30) additional days in which to file its audited financial statement if the pool notifies the Commissioner in writing at least thirty (30) days prior to the date the audited financial statement is to be filed. The Commissioner may grant such additional extensions as deemed appropriate.
- (b) Such annual audited financial reports required by this Rule shall adhere to the requirements for financial reports provided in Chapter 0780-1-65. The rules contained in Chapter 0780-1-65 shall apply to all pools in this State, regardless of the amount of the pool's direct premiums written per year or the number of policyholders/members of such pool.

- (3) The financial statements required by this Rule shall be prepared in accordance with the NAIC's Accounting Practices and Procedures Manual in effect for the period covered by the statement.
- (4) The Commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.
- (5) Notwithstanding anything in this Chapter to the contrary, failure to file any of the financial statements required by this Rule on a timely basis authorizes the Commissioner to suspend or revoke the certificate of authority of a pool. In lieu of suspending or revoking the pool's certificate of authority, the Commissioner may assess a civil penalty in the amount of one hundred dollars (\$100) per day for each day of delinquency, or in such other amount as allowed by statute.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.10 Rates and Rate Reporting.

- (1) Every pool shall adhere to the uniform classification system, uniform experience rating plan, and manual rules of the designated rate service organization. A pool may request permission from the Commissioner to vary from such manual rules. No permission granted by the Commissioner may be relied upon by a pool unless the variance is in writing.
- (2) Every pool shall use the advisory prospective loss cost approved by the Commissioner pursuant to Tenn. Code Ann. §§ 50-6-402 and 56-5-306.
- (3) Premium contributions to the pool shall be determined by applying the manual rates and rules of the designated rate service organization.
- (4) Each pool shall file with the Commissioner its loss cost multiplier and supporting information not later than fifteen (15) days after the effective date and at least annually thereafter at least fifteen (15) days prior to the pool's renewal date. Multipliers shall apply to the most recently approved, currently effective advisory prospective loss cost. All multipliers filed pursuant to this Paragraph shall be actuarially justified and shall be certified by a qualified actuary.
- (5) Each pool may be audited by an auditor acceptable to the Commissioner to verify proper classifications, experience rating, payroll and rates in conformance with the standards and rules of the designated rate service organization. A report of the audit shall be filed with the Commissioner in a form acceptable to the Commissioner within sixty (60) days of such audit. All such audits shall be prepared at the expense of the pool.
- (6) Each pool shall provide to its members a method by which a member may appeal the application of the pool's rating system to the member. If the pool fails to grant or reject such request within thirty (30) days of receiving the written appeal, the member may proceed in the same manner as if the application had been rejected. Any party affected by the pool's final decision may, within thirty (30) days of the decision, appeal the decision to the Commissioner.
- (7) If the Commissioner determines that, as a result of an improper application of the pool's rating system or violation of this Chapter, the pool has improperly calculated the premium rates of a member, the Commissioner may order the pool to assess its members or refund premiums collected in order to correct the rate charged the member.

Authority: Tenn. Code Ann. §§ 50-6-405(c); 50-6-414.

Rule 0780-1-54-.11 Premiums and Reserves.

- (1) Each pool shall establish through a qualified actuary a premium payment plan for its members and shall submit such to the Commissioner for his/her approval at least thirty (30) days prior to the beginning of the next fund year. The premium payment plan shall not include installment fees. The Commissioner may, in his/her discretion, disapprove a premium payment plan and require the pool to resubmit a premium payment plan for its members that is acceptable to the Commissioner.
- (2) Each pool shall establish and maintain adequate reserves for:
  - (a) Known claims and expenses associated therewith;
  - (b) Claims incurred but not reported and expenses associated therewith; and
  - (c) Bad or uncollectible debt reserves based on the historical experience of the pool or other pools, if no historical experience is available for the pool.
- (3) In addition to the minimum requirements for reserves set out in this Chapter, the Commissioner may require, after notice and opportunity for hearing, additional amounts so that a pool's reserves shall be reasonable in relation to the pool's outstanding liabilities and premiums and adequate to its financial needs. For purposes of this Rule, in determining whether a pool's reserves are reasonable in relation to the pool's outstanding liabilities and premiums and adequate to its financial needs, the following factors, among others, shall be considered:
  - (a) The size of the pool as measured by its assets, liabilities and surplus, reserves, premiums, and other appropriate criteria;
  - (b) The number and size of members in the pool;
  - (c) The nature and extent of the pool's excess coverage;
  - (d) The quality, diversification and liquidity of the pool's investment portfolio; and
  - (e) The recent past and projected future trend in the size of the pool's investment portfolio.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.12 Taxes and Delinquencies.

- (1) Each pool shall be subject to pay a tax on monies collected from members in the amount required of insurance companies pursuant to Tenn. Code Ann. § 56-4-206. Such tax shall also include the surcharge imposed on insurance companies pursuant to Tenn. Code Ann. § 56-4-206 to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, Tenn. Code Ann. § 50-3-101, *et seq.* Assessments made by the pool or ordered by the Commissioner shall be taxed as premium pursuant to this Rule.
- (2) Any pool failing and neglecting to make such returns and payments promptly and correctly on or before June 30 of each year shall forfeit and pay to the Commissioner, in addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part thereof of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part thereof and penalty thereafter at the rate of one half of one percent (.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any company not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest herein provided for shall apply to any part of the tax unpaid by the due date and no such penalty or interest may be waived.

- (3) The Commissioner has the discretion, for good cause shown, upon application made at least thirty (30) days in advance of delinquency date, to grant an extension of time determined by the Commissioner but not to exceed sixty (60) days to a pool to file the premium tax returns and pay the tax imposed by Tenn. Code Ann. § 56-4-206, without penalty attached, but such tax shall bear interest as herein provided from the date the amount was due.
- (4) Any pool failing to pay the tax due plus penalty and interest for sixty (60) days beyond the due date shall thereafter be barred from transacting any business of insurance in the state until these taxes and penalties are fully paid, and the Commissioner shall revoke the certificate of authority granted to the pool and its administrator to transact business in the state.
- (5) Notwithstanding any other provisions of this Chapter, no grace period for the filing of returns and payments shall be allowed. A premium tax return and payment made to the Commissioner shall not be considered as paid on or before the due date unless:
  - (a) The premium tax return and payment are received by the Commissioner on or before the due date;
  - (b) The premium tax return and payment bears a post office cancellation mark stamped by the United States post office on or before the due date, or are mailed by certified or registered mail, or have a certificate of mailing on or before the due date. A premium tax return and payment received by the Commissioner bearing a metered mail stamp and no post office cancellation mark stamped by the United States post office shall be deemed filed and received on the date such premium tax return arrives at the Commissioner; or
  - (c) In the event a premium tax return and payment are mailed but not received by the Commissioner, or received and the cancellation mark is illegible or omitted, such return and payment shall be deemed filed and received on the date they were mailed, if the sender establishes that the premium tax return and payment were deposited in the United States mail. In order to establish proof of mailing under these circumstances, a record authenticated by the United States post office that the original mailing was sent registered mail, certified mail, or by certificate of mailing, shall be the only proof accepted by the Commissioner.
- (6) A pool may receive a tax credit in accordance with Tenn. Code Ann. § 56-4-210.

Authority: Tenn. Code Ann. §§ 50-6-405(c), 56-4-207 and 56-4-210.

Rule 0780-1-54-.13 Investments.

- (1) Each pool shall maintain an amount equal to at least eighty-five percent (85%) of its net admitted assets on a statutory basis in the following:
  - (a) Cash and cash equivalents;
  - (b) The fully insured portion of a bank deposit when the insurance is provided by a solvent agency of the United States government or by collateral;
  - (c) A certificate of deposit issued by a bank or other financial institution whose deposits qualify for Federal Deposit Insurance Corporation protection; provided, if the Commissioner determines that the amount of the certificate of deposit purchased by an insurer in any one bank is not a sound investment, the Commissioner may require the insurer to liquidate that portion found to be an unsound investment;
  - (d) A share of savings account of a savings and loan or building and loan association, to the extent that an account is insured by the Federal Deposit Insurance Corporation; or

- (e) A rated credit instrument that is issued, assumed, guaranteed, or insured by the United States or Canada or by a government-sponsored enterprise of the United States or Canada if the instrument is assumed, guaranteed, or insured by the United States or Canada or is otherwise backed or supported by the full faith and credit of the United States or Canada.
- (2) Notwithstanding any other provision in this Chapter, funds not needed for current obligations may be invested by the board of trustees in "Tennessee securities" as defined in Tenn. Code Ann. § 56-4-210(b).
- (3) Investment in real estate by a pool may only be undertaken with the prior approval of the Commissioner.
- (4) Each pool shall maintain its investments and deposits pursuant to Chapter 0780-1-46.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.14 Information to Members.

The articles of incorporation, trust agreement or bylaws of each pool shall state what each member's rights are with respect to receiving financial information related to the pool. Notwithstanding anything contained in the organizational documents of the pool, each pool shall, within thirty (30) days of receiving a written request and upon payment of a reasonable charge, furnish to any member or former member affected by a rate used by the pool all pertinent information as to such rate, including but not limited to loss run data concerning the member. Each pool shall annually send to each of its members a copy of all information relative to the member's experience modification factor.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.15 Refunds and Dividends.

- (1) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than eighteen (18) months after the end of the fund year, after written approval is granted to the pool by the Commissioner to disburse such refund(s).
- (2) If a refund is declared by a pool and such refund is approved to be disbursed by the Commissioner, ten percent (10%) of the refundable amount must be retained by the fund or pool for an additional year to cover any liabilities that may develop as a result of incurred but not reported losses for that period.
- (3) Each member shall be given a written description of the refund policy of the pool at the time of application for membership. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the pool after that fund year. Each such refund policy shall be filed and approved by the Commissioner prior to the policy's effective date.
- (4) Before any dividend or refund may be paid, the pool must receive the written approval of the Commissioner.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.16 Sponsoring Associations.

- (1) Each pool shall annually file with the Commissioner a certified copy of the board minutes of its sponsoring association evidencing that the sponsoring association's board of directors has



reviewed the actions of the pool and that the pool is complying with the sponsoring association's constitution, by-laws, and procedures and applicable state statutes and regulations.

- (2) A sponsoring association may require a pool to pay to the sponsoring association a royalty fee or fee for using its name or other services which may be provided by the sponsoring association to the pool. All fees paid to the sponsoring association shall be approved by the Commissioner no later than thirty (30) days prior to the execution of any contract setting such fees between the pool and the sponsoring association
- (3) This Chapter supercedes any conflict between the requirements and procedures set forth in this Chapter and the constitution, by-laws and procedures of a sponsoring association.
- (4) A sponsoring association may not direct a pool as to who it should appoint as either a member of the pool's board of trustees, the administrator or the third party administrator of the pool. Notwithstanding the foregoing, a sponsoring association may require the pool to elect the president of the sponsoring association as a member of the board of trustees, and may require the board of trustees to elect its non-member board of trustee members from a group of not less than five (5) individuals selected by the sponsoring association's board of directors.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.17 Insurance Producer License Required.

Any person soliciting membership in a pool must be appropriately licensed as an insurance producer authorized to sell property and casualty lines of insurance. Any person selling, soliciting or negotiating membership in a pool shall be subject to all the statutory provisions, prohibitions and requirements contained in Tenn. Code Ann. Title 56, Chapter 6, Part 1.

Authority: Tenn. Code Ann. §§ 50-6-405(c); 56-6-101-126.

Rule 0780-1-54-.18 Misrepresentation Prohibited.

No person shall make a material misrepresentation, omit to state a material fact, including the joint and several nature of the pool, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offering of workers' compensation coverage by a pool to members of a trade or professional association. Notwithstanding the foregoing, a misrepresentation shall not provide a member grounds for avoiding its liabilities and obligations to the pool if that member's workers' compensation liabilities have been paid or incurred by the pool.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.19 Service of Process.

Each pool and member thereof that has operated or is operating in this State shall be deemed through acceptance of its certificate of authority to have appointed the Commissioner as its attorney-in-fact to receive service of legal process issued against it in this State with respect to any matters arising out of the actions of or related to the pool. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this State any obligation or liability of the pool.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.20 Examinations and Investigations.

- (1) The Commissioner has the authority to examine the affairs of any pool that has applied for or received a certificate of authority under this Chapter in order to determine the financial condition

of the pool or to determine whether the pool is in compliance with all insurance laws and regulations applicable to it. Such examinations shall be conducted when deemed necessary but no less than once every five (5) years, and all expenses of such examinations shall be assessed against the pool, including the costs of contract examiners or specialists.

- (2) The Commissioner has the authority to investigate the affairs of any person acting as a pool or any person associated or affiliated with a pool that offers or proposes to offer workers' compensation insurance in this State in order to determine whether such person is in violation of the Tennessee Insurance Law or this Chapter.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.21 Cease and Desist Orders.

- (1) Except as otherwise provided in Paragraph (2) of this Rule, after notice and opportunity for a hearing, the Commissioner may issue an order requiring a pool to cease and desist from engaging in any act or practice found to be in violation of any applicable statute or provision under the Tennessee Insurance Law, this Chapter, or any order of the Commissioner.
- (2) Whenever the Commissioner determines that a pool has been established or maintained in this State in violation of Rule 0780-1-54-.03, the Commissioner may issue a cease and desist order *ex parte* and without prior notice being given to the pool; provided, however, that the Commissioner shall provide the pool notice and the opportunity for hearing to challenge the issuance of the cease and desist order.
- (3) Any order issued pursuant to this Rule will be accompanied by a notice to the pool as to the right to have a hearing. All hearings conducted pursuant to this Chapter will be done in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*
- (4) Without limitation on other remedies provided by law, upon finding that any person or pool has violated any final cease and desist order issued by the Commissioner, the Commissioner may seek enforcement of such order, through the Attorney General and Reporter, in the Chancery Court of Davidson County.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.22 Suspension or Revocation of Certificate of Authority.

- (1) After notice and an opportunity for a hearing, the Commissioner may revoke or suspend the certificate of authority or a license issued under this Chapter upon a finding that any of the following exists:
  - (a) The pool is in a hazardous financial condition. The Commissioner, in evaluating the financial or operational condition of a pool, may utilize the criteria for evaluating the financial or operation condition of a pool contained in Chapter 0780-1-66. The Commissioner may consider such other factors in evaluating the financial condition of a pool as he/she may deem appropriate;
  - (b) The pool has failed to pay any premium tax, regulatory penalty or assessment imposed upon the pool at the time when such obligations are owed;
  - (c) The pool has failed to cooperate in any examination or investigation initiated by the Commissioner pursuant to Rule 0780-1-54-.20;
  - (d) The pool, the pool's administrator, or an officer or director thereof, or any member of the pool's board of trustees has failed to comply with any of the provisions of this Chapter or

with any lawful order of the Commissioner, including those issued pursuant to Rules 0780-1-54-.21 and 0780-1-54-.24, within the time prescribed;

- (e) The pool, the pool's administrator, or an officer or director thereof, or any member of the pool's board of trustees has provided incorrect, misleading, or incomplete and materially untrue information to the Commissioner;
  - (f) The pool's administrator, or an officer or director thereof, or any member of the pool's board of trustees has been convicted of a felony and the pool has failed to remove the administrator or board member;
  - (g) The pool has committed an insurance unfair trade practice or fraud, as defined in Tenn. Code Ann. § 56-8-104;
  - (h) The administrator is not sufficiently qualified or has not employed persons sufficiently qualified to administer a pool;
  - (i) The pool fraudulently obtained its certificate of authority;
  - (j) The pool made a misrepresentation in the application for the certificate of authority;
  - (k) The pool, the pool's administrator or any member of the pool's board of trustees has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise in its fiduciary capacities; or
  - (l) The pool uses a third party administrator that is not licensed by the Commissioner.
- (2) With respect to any pool licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-1-54-.21 or Paragraph (1) of this Rule, the Commissioner may assess a civil penalty against such pool in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the pool. Each day of continued violation constitutes a separate violation for purposes of computing such penalty.
- (3) The Commissioner may serve a notice or order in any action arising under this part by registered or certified mail to the pool's administrator and/or board of trustees at the address of record in the files of the Commissioner. Notwithstanding any provisions of law to the contrary, service in the manner set forth herein shall be deemed to constitute actual service on such pool or applicant.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.23 Termination of Certificate of Authority.

- (1) A pool wishing to terminate its certificate of authority and cease operations shall file a notice of intent to terminate with the Commissioner and its members no later than ninety (90) days prior to the proposed termination date. A pool shall accompany this notice with a detailed description of its plan as to how it will meet all its outstanding workers' compensation obligations and liabilities.
- (2) The Commissioner shall not grant the request of any pool to terminate its certificate of authority until such time as it has demonstrated to the Commissioner that it has made satisfactory plans to meet all outstanding workers' compensation obligations and liabilities. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

Authority: Tenn. Code Ann. § 50-6-405(c).

Rule 0780-1-54-.24 Assessments.

- (1) If the assets of a pool are at any time insufficient to enable the pool to discharge its legal liabilities and other obligations and to maintain the surplus and reserves required of it under this Chapter, it shall, within thirty (30) days of receiving notice of such deficiency, levy an assessment upon its members for the amount needed to eliminate the deficiency.
  - (a) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from:
    1. Surplus funds obtained by the pool from a previous fund year, with the prior written approval of the Commissioner;
    2. Administrative funds;
    3. Assessment of the membership, if ordered by the pool; or
    4. Such alternative method as the Commissioner may approve or direct.
  - (b) Any deficiency expected for any fund year shall be reported, accompanied by supporting financial documentation, to the Commissioner within three (3) working days of the pool receiving notice of the deficiency.
- (2) If the pool fails to assess its members or to otherwise make up such deficiency within thirty (30) days of notice of such deficiency, or such other time as may be allowed by the Commissioner, the Commissioner shall issue an order to the pool and the pool's members specifying the time period in which the pool must assess its members, the procedures for implementing the assessment, and the time in which the members have to pay the assessment.
- (3) Any pool or member affected by an order of assessment issued by the Commissioner may request, in writing, a hearing before the Commissioner as to the necessity or grounds for such order. Any request for such a hearing must be filed no later than thirty (30) days after the entry of the Commissioner's order.
- (4) A pool that has a deficiency in a fund year may be considered to be in a hazardous financial condition for purposes of this Chapter, the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, or any other regulatory purpose or any of the remedies provided by this Chapter.
- (5) A pool that fails to comply with an order of the Commissioner issued under this Rule shall be considered to be insolvent for purposes of this Chapter, the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, or any other regulatory purpose.
- (6) In the event of a supervision, liquidation, or rehabilitation of a pool, the Commissioner shall levy an assessment upon such members of the pool for such an amount as the Commissioner determines to be necessary to discharge all liabilities of the pool, including the reasonable costs of the supervision, liquidation, or rehabilitation.

Authority: Tenn. Code Ann. §§ 50-6-405(c) and 56-9-101, *et seq.*

Rule 0780-1-54-.25 Applicability of the Insurers Rehabilitation and Liquidation Act.

The proceedings authorized by Title 56, Chapter 9 are applicable to pools. A pool established or maintained in this State is considered by its nature included in the definition of the term "insurer" found in Tenn. Code Ann. § 56-9-103(12) for all such purposes.

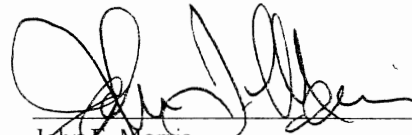
Authority: Tenn. Code Ann. §§ 50-6-405(c) and 56-9-101, *et seq.*

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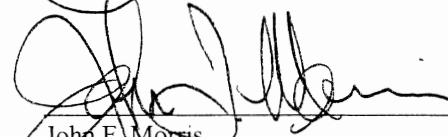
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Signature of the agency or officers directly responsible for proposing and/or drafting these rules:




John F. Morris  
Chief Counsel for Insurance

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.



John F. Morris  
Chief Counsel for Insurance

Subscribed and sworn to before me this 29th day of October, 2004

  
Notary Public

My commission expires on the 20th day of Sept, 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 29 day of Oct, 2004.

Riley C. Darnell  
Riley C. Darnell  
Secretary of State  
W. Miller

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